

SOUTHERN PACIFIC TRANSPORTATION COMPANY

IBLA 77-102

Decided September 19, 1977

Appeal from decision of California State Office rejecting application for patent pursuant to section 321(b) of the Transportation Act of 1940.

Set aside and remanded.

1. Railroad Grant Lands

Pursuant to section 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b) (1970), patent may be issued for grant lands sold by the railroad if either (1) the land was not mineral in character between the time of the alleged grant to the railroad and the time of the sale or (2) although the land was mineral in character the purchaser was not, at the time of sale, chargeable with actual or constructive notice of that fact.

2. Mineral Lands: Determination of Character of--Railroad Grant Lands--Rules of Practice: Evidence

To establish the mineral character of railroad grant lands under the Act of July 1, 1862 (12 Stat. 489), as amended, it must be shown that known conditions--which may include geological conditions, discoveries of minerals in adjacent land and other observable external conditions upon which prudent and experienced men are known to be accustomed to act--on the critical date are such as reasonably to engender the belief that the land contains mineral of such quality and in such quantity as to render its extraction profitable and justify expenditures to that end.

3. Mineral Lands: Determination of Character of--Railroad Grant Lands--Rules of Practice: Hearings

When the Department of the Interior finds that public land within the place limits of a grant to a railroad under the Act of July 1, 1862, as amended, was mineral in character and the railroad company, filing for patent on behalf of an alleged bona fide purchaser from it, challenges such finding, a hearing should be granted at which the Department has the obligation of making a prima facie case of mineral character, whereupon the company has the burden of establishing nonmineral character by a preponderance of the evidence, and the bona fides of the purchaser.

APPEARANCES: Clarence H. Pease, Esq., Sacramento, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Southern Pacific Transportation Company has appealed from so much of a decision dated December 6, 1976, of the California office as rejected its application for a patent for lot 2, sec. 1, T. 47 N., R. 8 W. and the SE 1/4 SE 1/4 sec. 35, T. 48 N., R. 8 W., M.D.W., California, pursuant to section 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b) (1970). While the decision allowed the application as to lots 3 and 5, sec. 1, supra, it rejected it as to the other tracts on the ground that the lands had been determined to be mineral in character.

The Southern Pacific Transportation Company is the successor to the Central Pacific Railroad Company which was granted certain lands, in aid of the construction of a railroad, by the Act of July 1, 1862, 12 Stat. 489, as amended by the Act of July 2, 1864, 13 Stat. 356. It filed the application on behalf of Harley H. Hanigan, successor in interest of the railroad company's vendee.

The granting acts, supra, excluded mineral lands. After the line of the railroad was definitely located, the railroad company in an instrument dated November 22, 1907, conveyed its "right, title and interest in" the land to L. Y. Coggins and others, Hanigan's remote predecessors. The lands have never been patented to the railroad.

The Transportation Act of 1940 provides in section 321(b) that any land grant railroad wishing to take advantage of charging higher

rates for carrying Government traffic must file a release of any claim it might have against the United States to lands granted to the railroad. It further states however, that nothing in section 321(b) should be construed "to prevent the issuance of patents confirming the title to such lands as the Secretary of the Interior shall find have been heretofore sold by any such carrier to an innocent purchaser for value."

Southern Pacific and its predecessor filed releases which specifically excepted lands sold to innocent purchasers for value prior to enactment of the Transportation Act of 1940. Thereafter Southern Pacific filed the application for patent involved in this appeal, stating that the application was for lands sold to an innocent purchaser for value. The State Office rejected the application on the ground that the tracts of land applied for are or were mineral in character and thus excluded from the grant made by the Acts of July 1, 1962, supra.

It pointed out that an investigation revealed that Lot 2 Section 1 and SE 1/4 SE 1/4 35, supra, had been determined to be mineral in character by a Register's decision of September 9, 1902, as affirmed by the Commissioner's letter "N" of May 9, 1903. It then held that since the railroad grant excluded mineral lands and the lands had been determined to be mineral in character prior to their conveyance by the railroad, the lands were not subject to the provisions of the Transportation Act.

On appeal, appellant contends that (1) the decision was rendered without a hearing, (2) the land is not and was not mineral in 1902 and 1903, (3) Coggins et al. were bona fide purchasers, and (4) there is no evidence or record that any mining was even considered on the land or evidence of mineral values.

[1] The principles governing the resolution of applications such as this have been restated several times. In order to make a finding that title to the land specified by the granting acts did not pass to the grantee of the railroad company, it must appear that the lands were of known mineral character either at the date of definite location of the line or at the date of the original sale by the railroad, or at any time between, and that the purchasers should have known at the time of their purchase that the land was excepted from the grant to the railroad, and that they could obtain no title from the railroad. This is so even though the land later loses its mineral character. Southern Pacific Transportation Co., 23 IBLA 232, 83 I.D.(1976); Southern Pacific Co. (Heirs of George H. Wedekind), 20 IBLA 365 (1975); United States v. Tobiassen, 10 IBLA 379 (1973); Southern Pacific Company, 71 I.D. 224 (1964). If it is found that the land was known to be mineral in character at the

time of the railroad's conveyance, and the purchaser was chargeable with actual or constructive knowledge of that fact, the grant would fail as to that land. Southern Pacific Co., (Wedekind); Southern Pacific Company, supra; State of Wyoming v. United States, 255 U.S. 489, 507 (1921); Anderson v. McKay, 211 F.2d 798, 807 (D.C. Cir. 1954), cert. denied, 348 U.S. 836 (1954), rehearing denied, 348 U.S. 890 (1954); Barden v. Northern Pacific R.R. Co., 154 U.S. 288 (1894).

Where the purchaser from the railroad believed at the time of purchase that the land was mineral and there was physical evidence of its mineral character, or if conditions were such that the purchaser should have known then that the land was excepted from the grant to the railroad company, he is not a purchaser in good faith within the "innocent purchaser" proviso of section 321(b) of the Transportation Act of 1940. United States v. Tobiassen, supra; Southern Pacific Company, supra; Southern Pacific Co. (Wedekind), supra, and cases therein cited.

[2] In determining whether the land is mineral in character, it is not essential that there be an actual discovery of mineral on the land. It is sufficient to show only that known conditions were such as reasonably to engender the belief that the land contained mineral of such quality and in such quantity to render its extraction profitable and justify expenditures as to that end. Such belief may be predicated upon geological conditions, discoveries of mineral in adjacent land and other observable external conditions upon which prudent and experienced men are shown to be accustomed to act. United States v. Tobiassen, supra.

[3] Where it is found that railroad grant lands did not pass because of their mineral character and the railroad acting on behalf of its grantee disputes this finding, the procedure is for the Department to bring charges against the railroad, and to hold a hearing on the charges. At any such hearing it is first the Department's obligation to present a prima facie case that the lands were mineral in character on the critical date, whereupon the burden shifts to the railroad to show by a preponderance of the evidence that the lands, or any part thereof, were not mineral in character. United States v. Tobiassen, supra; Southern Pacific Company, supra; Southern Pacific Co. (Wedekind), supra, and cases cited therein.

The State Office apparently considered that the Departmental determination that the lands were mineral in character prior to the date of the conveyance was dispositive of the issue and obviated a hearing to determine either the mineral character of the land or Coggins' good faith and innocence.

We cannot agree. While the fact that Coggins purchased the tracts after the railroad's selection application for them had been

rejected, and the rejection affirmed, on the grounds that they were excluded from the grant as mineral land, imposes a heavy burden on one claiming that Coggins et al. was an innocent purchaser for value, it does not establish lack of innocence beyond rebuttal. The railroad's actions are not binding on its purchaser.

Accordingly, we conclude that in accordance with the regular practice, a hearing must be held, if the State Office believes that appellant is not entitled to receive a patent. 1/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the California State Office is set aside and the case remanded for further proceedings consistent herewith.

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Martin Ritvo  
Administrative Judge

I concur:

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Frederick Fishman  
Administrative Judge

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1/ For cogent comments as to the interrelation of § 321(b) supra, and an earlier act, sec. 5 Act of March 3, 1887, 43 U.S.C. § 898 (1970), affording relief to bona fide purchasers of land excluded from a railroad grant see Judge Thompson's concurring opinion in Southern Pacific Company, 20 IBLA 365, 377, and Atlantic Pacific Ry. Co., 58 I.D. 577, 581-582 (1944). Judge Thompson also properly stresses that the delay in this or similar cases should not redound to appellant's benefit by lessening his burden of proof. Southern Pacific Company, supra at 380.

## ADMINISTRATIVE JUDGE THOMPSON CONCURRING IN PART:

Appellants in this case have requested a hearing to show that the land was not mineral in character in 1902, 1903 or 1907, and to establish the bona fides of Harley H. Hanigan's predecessor in interest who purchased the land from the railroad company. The majority in this case orders a hearing, but apparently through the Government contest procedures whereby the Government assumes the burden of presenting a prima facie case. Because the land was previously determined to be mineral in character in adjudicative proceedings within this Department prior to the purchase of the land by Hanigan's predecessors, I do not believe contest proceedings against the railroad company are required here. Certainly, if the railroad company were acting in its own behalf it would be barred by its release under section 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b) (1970). Even apart from the release, the company would be barred by the administrative principle of finality - the administrative equivalent of res judicata - from reopening the the adjudicative determination regarding the mineral character of the land and the effectiveness of its grant.

The real question raised here is the effect of the purchase by Hanigan's predecessors after the prior adjudication of the railroad's grant, and his rights now. The regulations, 43 CFR 2631.0-8, interpret the Transportation Act of 1940 as not enlarging the railroad grants and not applying, therefore, to lands which were not subject to the grants because, inter alia, they were mineral in character. As I suggested in my concurring opinion in Southern Pacific Company, (Heirs of George H. Wedekind), 20 IBLA 365, 377 (1975), confirmation of title to an innocent purchaser of lands mineral in character could be made only through the implementation of prior statutes such as section 5 of the Act of March 3, 1887, 43 U.S.C. § 898 (1970), which permitted the sale of certain lands excepted from the operation of the railroad grant to the bona fide purchaser of the railroad company. I noted in my opinion an assumption that the Transportation Act of 1940 did not repeal the 1887 Act, but merely preserved such rights as could have been perfected under the existing law. Hanigan's predecessors in interest acquired title after an adjudication that the land was mineral in character. This raises issues concerning the effect of that adjudication upon them, whether they had actual or constructive notice of such adjudication prior to purchase, and other questions going to the good faith required for an "innocent" or "bona fide" purchaser. In my concurring opinion in Southern Pacific, supra, I noted that other issues could be raised such as the matter of laches in the appellants' delay in applying for patent to the land.

In view of Hanigan's request for a hearing, however, I believe we should order a discretionary hearing under 43 CFR 4.415 to resolve

all the factual questions relating to these issues and all issues necessary for Hanigan to establish entitlement to a patent to the land. This would permit legal resolution of the issues upon a more informed factual background than now exists before us. For example, there is some indication in the record that Hanigan's predecessor may have had a contract to purchase the land from the railroad company prior to the departmental adjudication. This goes to the issues of the purchaser's notice of these proceedings and whether the company represented the purchaser in those proceedings so that the purchaser should be bound by them as well as the company. In a discretionary fact-finding hearing held pursuant to 43 CFR 4.415 Hanigan would not only have the ultimate burden of persuasion to show entitlement to patent, but also the initial burden of going forward with sufficient evidence to establish the character of the land, the good faith of his predecessors, and his entitlement to patent. I agree with the majority that we order a hearing in this case, but I wish to make it clear that the hearing I would order would be under the discretionary fact-finding procedure rather than a Government contest procedure in the circumstances of this case.

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Joan B. Thompson  
Administrative Judge

